IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.845 OF 2003
IN
SUMMARY SUIT NO.1212 OF 2003

Colgate Palmolive (I) Ltd. Plaintiff

versus

Roma Kusum Enterprises Defendant

Mr.Arif Lampwala with Deepti Lmand i/by Advani & Co. for plaintiff.

Mr.Javeed Huseein for defendant.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 12th July 2005

PC :

1. The plaintiff invokes the summary jurisdiction of this Court to claim monies under written contract as evidenced by Purchase Orders, Delivery Challans and Invoices under which the plaintiff sold, supplied and delivered to the defendant goods mentioned therein. The case of the plaintiff is that the defendant accepted these goods without raising any objection as to their quantity, quality and price. In discharge of the liability under the invoices raised from time to time, defendant forwarded to the

plaintiff a cheque drawn on his bank. Copies of cheque and endorsement of the bank when the said cheque was presented through the plaintiff's banker, is at Exhibits-D and D-1. The suit notice was issued on 9th October 2002 which was duly served. Now, a claim is made for the invoice amounts along with interest @ 18% p.a.. According to the plaintiff, the claim of interest is on the dishonoured cheques which is an negotiable instrument.

2. An affidavit in reply to the Summons for Judgement is filed and it is contended therein that defendant is sued as a Sole Proprietor of a proprietary concern which is having it's office and place of business in the State of West Bengal. It is contended by the advocate for the defendant that even if leave under clause XII of Letters Patent is obtained by the plaintiff, no part of the cause of action has arisen within the jurisdiction of this Court. He points out that the goods have been supplied by the plaintiff from Kolkata. The same were supplied to the defendant at Beharampur in West Bengal. The plaintiff was issued a cheque by the defendant drawn on the defendant's bank at Kolkata. The said cheque has been returned unpaid on

presentation by the defendant bank at Kolkata. It is not the case of the plaintiff that the amounts under the invoices were payable at Mumbai or that they have been paid at Mumbai. Therefore, this Court has no jurisdiction to entertain and try the present suit. The leave is liable to be revoked even if no formal application is made.

3. This Court has granted leave under Clause XII of the Letters Patent on the petition presented by the plaintiff and it is contended therein that the order for the supply of goods was placed in Mumbai. The cheque which was forwarded by the defendant from Kolkata to the plaintiff at Mumbai, was presented by the plaintiff to their bankers at Mumbai. They have received the intimation from the defendant's bankers at Mumbai. The leave was granted on the basis of averments in para 11 of the petition. No application is made to revoke the leave granted as early as on 23rd January 2003. That apart, it cannot be decided merely on the pleas raised on affidavit that this Court lacks territorial jurisdiction to entertain and try the present suit. The principles which have to be applied for determining jurisdiction of a Court in suits

for claims arising out of contractual obligations, are by now well settled. Therefore, as far as territorial jurisdiction of this Court is concerned, prima facie, in the face of the leave granted, it is not possible to accept the pleas raised in the affidavit. That apart, once a cheque has been forwarded admitting liability under the invoices, fairness and justice demands that ifw an opportunity is to be afforded to the defendant to make good his case then some condition is imposed. Accordingly, following order.

4. ORDER :- On the defendant depositing a sum of Rs.12.00 lakh (Rs.Twelve lakh only) within a period of 12 weeks in this Court, conditional leave to defendant to defend the suit. On such deposit, the suit shall stand transferred to the list of commercial causes with usual directions to file written statement, discovery and inspection. Needless to state that if the amount is not so deposited, further consequences in law would follow.

(S.C.DHARMADHIKARI, J.)